Legislative Analysis

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MEDICAL PAROLE FOR MEDICALLY FRAIL PRISONERS

House Bill 4101 As Introduced
Sponsor: Rep. Dave Pagel

House Bill 4102 (H-1)
Sponsor: Rep. Peter J. Lucido

House Bill 4103 As Introduced
Sponsor: Rep. Rob VerHeulen

Committee: Appropriations
Complete to 12/4/17

SUMMARY:

House Bill 4101 would amend the Corrections Code of 1953 to do the following:

- Authorize the Parole Board to grant a medical parole for a prisoner who is determined to be medically frail.
- Define "medically frail" as describing an individual who is a minimal threat to society as a result of his or her medical condition, who has received a risk score of low on a validated risk assessment, whose ability to perform two or more activities of daily living is significantly impaired, and who may have limited mobility and ability to transfer from one physical position to another, as the result of one or more of the following conditions from which the individual is not expected to recover: a disabling mental disorder, including dementia, Alzheimer's, or a similar degenerative brain disorder; a serious and complex medical condition; or a physical disability.
- Define "activities of daily living" as basic personal care and everyday activities as described in the Code of Federal Regulations, including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring from one physical position to another, including, but not limited to, moving from a reclining position to a sitting or standing position.
- Require the Bureau of Health Care Services to appoint a specialist in the appropriate field of medicine, who is not employed by the Department of Corrections, to evaluate the condition of a prisoner who is determined by the Bureau to be physically or mentally incapacitated.
- Require a prisoner who is considered for release to agree to be placed in a medical facility where medical care and treatment are determined to be appropriate for the parolee by the Parole Board; to agree to the release of medical records that are directly relevant to the condition or conditions rendering the prisoner medically frail to the prosecutor of the county from which the prisoner was committed before the Parole Board determines whether or not to grant medical parole; and, if granted medical parole, to agree to the quarterly release of medical records that are directly relevant to the condition or conditions rendering the prisoner medically frail at the request of the prosecutor of the county from which the prisoner was committed. In the case of an incapacitated prisoner, an individual who is legally entitled to agree can agree on behalf of the prisoner.

- Define “medical facility” as a hospital, hospice, nursing home, or other housing accommodation providing medical treatment suitable to the condition or conditions rendering the prisoner medically frail.
- Require the parolee to adhere to the terms of medical parole for the length of the parole term.
- Require the term of medical parole to be for a term not less than the time necessary to reach the prisoner’s earliest release date.
- Authorize a parolee who violates the terms of parole to be transferred to a setting more appropriate for the medical needs of the parolee or to be subject to the parole violation process as determined by the Parole Board and the Department of Corrections.
- Require that the parolee be placed only in a medical facility that agrees to accept the parolee and is agreed upon by the parolee and the Parole Board.
- Require the Parole Board to monitor the medical condition of a prisoner granted medical parole.
- Authorize the Department of Corrections to enter into contracts with facilities to facilitate the paroles.
- Prohibit the Department of Corrections from retaining authority over the medical treatment plan for a prisoner granted medical parole.
- Require the Department of Corrections and the Parole Board to ensure that the placement and terms and conditions of medical parole do not violate any other state or federal regulations.
- Require facilities utilized for medical parole to operate in a manner that ensures the safety of the residents of the facility, and, when feasible, to house prisoners granted medical parole in close proximity to one another, preferably in a single hallway or wing of the facility.

The bill would take effect 90 days after the date it is enacted into law. House Bills 4101 and 4102 are both tie-barred to one another, which means that neither could take effect unless both were enacted.

MCL 791.235

House Bill 4102 is a technical companion bill that would amend the Corrections Code of 1953 to establish that every type of prisoner can be eligible for the special medical parole prior to being parole-eligible (e.g., prisoners serving with allowances for good time, prisoners serving with allowances for disciplinary credits, prisoners serving indeterminate sentences with minimums in terms of years, prisoners serving consecutive terms, prisoners serving life sentences, etc.).

The bill would take effect 90 days after the date it is enacted into law. House Bills 4102 and 4101 are both tie-barred to one another, which means that neither could take effect unless both were enacted.

MCL 791.233, 791.233b, and 791.234

House Bill 4103 would amend the Michigan Penal Code to make it a misdemeanor punishable by imprisonment for not more than one year, or a fine of not more than $1,000, or both, for a person to do any of the following:

- Sell, give, or furnish, either directly or indirectly, poison, a controlled substance, or a weapon to a medically frail parolee, knowing that person is a medically frail parolee.
- Intend to assist a medically frail parolee abscond from parole or assist in leaving or attempting to leave a medical facility in which the parolee has been placed as a condition of medical parole.
- Knowingly cause a medically frail parolee to have contact with a person with whom the parolee is prohibited from having contact with as a condition of parole or a valid personal protection order.

The provisions of the bill would not apply to a person who provides a controlled substance to a parolee if that substance has been prescribed by a physician for use by the parolee. A controlled substance would mean that term as defined in the Public Health Code (MCL 333.7104). The provisions of the bill would not apply to a person who aids or assists a parolee in leaving or attempting to leave a medical facility because of any of the following: the parolee requires a medical service that must be performed at a different medical facility; the parolee has a medical emergency that requires medical service at a different medical facility; or there is a natural disaster, fire, or infrastructural failure at the medical facility in which the parolee has been placed that necessitates evacuating the parolee.

The bill would take effect 90 days after the date it is enacted into law. House Bill 4103 is tie-barred to House Bill 4101, which means that HB 4103 could not take effect unless both HB 4101 and HB 4102 were enacted.

Proposed MCL 750.197d

FISCAL IMPACT:

House Bills 4101 and 4102 would have an indeterminate fiscal impact on the state. Savings could be realized as it is assumed that Medicaid would cover healthcare-related costs for "medically frail" prisoners, as that term is defined in HB 4101, who are released on medical parole.

Providing health care to an aging prison population is a large and growing cost for the state. Though the prison population has declined overall, the population of prisoners over the age of 50 has increased. In 2007, 15% of the prison population was over age 50. Currently, 23% are over age 50.

Caring for prisoners inside the prison environment is far more expensive than it is on the outside. Under the 1965 law that created Medicaid, anyone entering a state prison forfeited Medicaid eligibility. However, an exception to that general rule opened up in 1997 when the United States Department of Health and Human Services wrote to state Medicaid directors saying prisoners who leave state or local facilities to receive care in hospitals or nursing homes could be covered by Medicaid if they would otherwise qualify for Medicaid.

Most elderly or disabled prisoners qualify under existing Medicaid rules, as long as they receive care outside of prison facilities.

Receiving federally subsidized long-term care outside of prison walls potentially could reduce the state's share of health care costs. A shift in medical costs to the Medicaid program would result in a net savings equal to approximately 65% of those costs, as the state generally must provide state match equal to 35% of Medicaid expenditures. The average annual Medicaid cost for a nursing facility in the state is roughly $75,000. The cost to the state for that care would be a little over $26,000.

To be eligible for medical release under HB 4101, a prisoner must meet a number of requirements related to his or her medical condition and to his or her risk to public safety. According to the Department of Corrections, there are roughly 120 prisoners who would be eligible for medical release under the definition of medically frail contained in the bill, but those prisoners have yet to be screened for risk or screened for placement, so it is not guaranteed that all 120 prisoners would be released. Also, there are another 700 to 750 prisoners who are not yet eligible for release under the medically frail criteria, but who could become eligible in the future based on their chronic care needs. They have chronic conditions which will require treatment for the rest of their lives.

Based on national research, it is estimated that medically frail prisoners cost anywhere from three to five times more than other prisoners in the average population. In fiscal year 2016, the average health care cost for prisoners in the average prison population was roughly $7,500 per prisoner. At five times higher, average health care costs for medically frail prisoners is roughly $37,500.

Shifting the group of 120 prisoners to an outside nursing home setting could yield the department a savings of about $3.6 million annually in healthcare-related costs. The savings could be slightly higher when other incidental costs, such as meals, transportation, and clothing, are included. Shifting the health care costs for these prisoners to Medicaid would cost the state roughly $3.1 million. So, the net annual savings to the state would be about $500,000. If the bills resulted in reducing the prison population enough to warrant closing a housing unit, or entire facility, savings to the state could be even greater.

House Bill 4103 would have no fiscal impact on the state, but could have a fiscal impact on local units of government. To the extent that the bill results in a greater number of convictions, resulting in individuals being imprisoned for not more than a year or a fine of not more than $1,000, or both, it could increase costs on local correctional systems. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.